

does not unfold topically or coherently. Realistic problems require knowledge and skills from a variety of disciplines connected to each other in disordered ways. In contrast to this messiness, students need coherence in the process of learning. Therefore, in the design of a problem-centred curriculum, a natural disharmony exists between the students' need for coherence and the designer's need to create realistic problems. If the needs of both designers and students are to be met, coherence and realism must be reconciled.

How can this be accomplished? The first strategy, problem-generated design, is an approach to design whose purpose is to reconcile coherence with realism. Using this strategy, designers adhere to a systematic, staged approach to curriculum design: setting objectives, designing learning activities to meet those objectives, and trying out and evaluating the curriculum. The second strategy applies specifically to skills teaching. This strategy requires you to choose the appropriate legal context for the skill you are trying to teach. It assumes that while teaching the skill is the primary objective and legal context is of secondary importance, the legal context is still essential to create a meaningful problem. Carefully designed standardised formats also increase efficiency and moderate difficulty, enabling students to meet certain objectives more quickly in the face of resource or time constraints.

The fifth feature of good problems is that they are similar to, but different from, each other. Problems should be similar enough to promote transfer of learning, but different enough to broaden the base of practice, thus stretching and deepening problem-

solving skills. To achieve this state in skills teaching, two techniques can be used: format similarity and context similarity.

The sixth feature is that problems should present an interesting puzzle that the students know something about but cannot solve right away. This is what is meant by 'challenging'. One way of achieving this familiar-but-novel feature in designing problems is to view problem solving as having two aspects: linearity and flexibility. Linearity is the step-by-step aspect of problem solving that requires familiarity with routines and precedents applicable to the legal context. Flexibility is the higher-level skill needed to modify the routines and precedents or to create something novel to solve the problem.

Obviously, the features of good problems and the principles for designing good problems need to be understood in relation to these other elements of the curriculum – elements, including the complex role of the facilitator, that this article has not explored. Even so, it is worth studying good problems separately from these elements, because good problems are the core of the problem-centred curriculum.

Creative problem solving vs. the case method: a marvellous adventure in which Winnie-the-Pooh meets Mrs Palsgraf

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For over a century, the 'case method' of instruction has been the predominant mode of law school instruction. The case method remains the centrepiece of legal education, although the last quarter of the twentieth century has witnessed increased experimentation with other models such as law

clinics, simulations, learning-by-doing and the problem method.

Inflated claims for the effectiveness of the case method are based on flawed premises and are demonstrably false. It is time for law school teaching to relegate the case method to its appropriate position – as only one analytical tool among many which can be employed in the resolution of a client's problems. The skills developed by the case method are at best rudimentary; the much-touted 'legal analysis' of the case method is little more than a narrow articulation of rather obvious adversarial positions. Accompanied by the selective matching of factual data with more sophisticated models of problem solving, case analysis is a blunt instrument. Even worse, as a methodology it is antithetical to the effective resolution of most clients' problems.

Particularly in the early stages of representation, good lawyering requires skills of listening, fact investigation, interest clarification, negotiation and planning. However, the case method does not even purport to address these skills. As a result of continuing criticism of the limitations of the case method in particular and law school education in general, courses teaching such essential lawyering skills are gradually being introduced into law school curricula. They have by no means surpassed or supplanted the case method, which continues to be the centrepiece of legal education.

In contrast, creative problem solving proceeds on the theory that lawyers can join together with other professionals to provide more effective solutions to clients' problems. Creative problem solving assumes that not all problems require legal solutions and not all legal problems re-

quire a lawsuit. Instead, problems are viewed as multidimensional, often requiring non-legal or multidisciplinary solutions. The lawyer's role is to assist the client in resolving problems in the broadest sense because, in our litigious society, many non-legal problems tend to masquerade as legal problems. One of the most significant aspects of the lawyer's role is assisting the client in building, maintaining, and strengthening positive relationships with others to avoid or prevent conflict.

If we wish to change the way lawyers prioritise their thinking about problems, we must change the way they are educated. We cannot abandon the case method entirely, but we must rethink the advisability of its continued use as the primary method of legal education. By continuing to rely on appellate cases as the primary method of teaching in the first year, we not only convey the tacit message that litigation is the problem solving method of choice, but we actually make it more difficult to introduce later instruction in other forms of problem solving.

Underlying the case method is a set of tacit assumptions which significantly constrain the options a lawyer may consider in attempting to resolve a client's problem. Lawyering limited to the analysis and manipulation of rights misses opportunities to prevent or resolve problems by reconciling or redesigning the relationships in which problems are embedded.

The justification for the case method that it teaches law students 'how to think like lawyers' is, of course, the most commonly advanced justification for this curiously limited view of the law. This much seems clear: practising lawyers do not think like appellate judges, and lawyers do not think like academicians. This

famed legal reasoning (the ability to 'think like a lawyer'), which the case method teaches, appears to be a uniquely circular style of reasoning.

For creative problem solving to occur, it is essential that the problem be stated as simply, but as broadly as possible, to allow for a variety of different solutions. As a foundation for the investigative steps which follow it, the statement of the problem must avoid anticipating the conclusion or outcome. Too narrow a problem definition risks overlooking both the complexity of the problem and the richness of resources to resolve it. In addition, too narrow a definition will stifle creativity. Moreover, a definition which assumes the answer is anathema.

Should we toss out the case method entirely? Definitely not. The study of litigated disputes not only teaches the rules of law but provides the reasoning to show how and why the cases were won. Preventive law cannot be properly practised until the practitioner knows what must be prevented and how it can be done. Problems cannot be creatively solved until the practitioner fully understands the problems and the nature of their legal solutions.

But we should recognise the truth about the case method: it does not teach law students to think like lawyers; it teaches them to think like judges with all of the constraints that role implies. This is not a bad thing. In order to be competent advisers, lawyers must understand how judges think. But they also need to understand that, as lawyers, their available options are greater and therefore their own thought processes can be much broader. They will be much more effective in representing their clients if they think more as creative problem

solvers and less like the ultimate decision maker.

The goal for legal education is to provide contexts in which students can learn fundamental legal concepts, develop intellectual versatility, learn to use the range of their intellectual capacities across the range of lawyering tasks and develop a critical consciousness about their professional role. Instead of teaching students from appellate decisions on how to win or defend a lawsuit, we could teach from those same cases the following: how to draft the will or trust; how to write a security agreement or mortgage; how to prevent or mitigate an actionable tort; how to protect intellectual property; how to obtain approval of development plans; how to negotiate, mediate and arbitrate; and how to word the settlement agreement. The possibilities of using full-context case studies along with appellate decisions are challenging and endless.

However strongly the traditionalists may object, there is a growing body of scholarship supporting the need for radical changes in legal education. In law, as elsewhere, traditional borders between separate intellectual disciplines are rapidly breaking down. The complaints of the profession and the public dislike of lawyers and lawsuits, are all forcing legal educators to face up to the fact that there are definite limitations to what can be achieved through the case method of instruction.

Teaching creative problem solving: a paradigmatic approach

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Problem solving involves perceiving that the world we would like varies from the world as it is and trying to move the world in the desired di-